

AMENDED IN ASSEMBLY MARCH 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 691

Introduced by Assembly Member Muratsuchi

February 21, 2013

An act to add Section 6311.5 to the Public Resources Code, relating to state lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Muratsuchi. State lands: granted trust lands: sea level rise.

Existing law vests with the State Lands Commission control over specified state lands, including tidelands and submerged lands. Existing law grants to various local entities the right, title, and interest of the state in and to certain tidelands and submerged lands in trust generally for purposes of commerce, navigation, and fisheries, and for other public trust purposes.

This bill would provide that addressing the impacts from sea level rise for all of its legislatively granted public trust *lands* shall be among the management priorities of a local trustee, as defined. The bill would require a local trustee whose gross public trust revenues exceed \$250,000 to prepare and submit to the commission, no later than July 1, 2019, except as provided, ~~a descriptive plan~~ *an assessment* of how it proposes to address sea level rise. The bill would permit, but not require, a local trustee whose gross public trust revenues are \$250,000 or less to prepare and submit ~~a plan~~ *an assessment* to the commission. The bill would require a local trustee to consider and use relevant information from specified reports on sea level rise in preparing the ~~plan~~ *assessment*. The bill would require that the commission make those

plans assessments available to the public on its Internet Web Site, and send electronic copies to certain other public entities.

By adding to the duties of local agencies that are local trustees of granted public trust lands, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Upon admission to the United States, and as incident of its
4 sovereignty, the State of California received title to the tidelands,
5 submerged lands, and beds of navigable waterways within its
6 borders to be held subject to the public trust doctrine for statewide
7 public purposes, including commerce, navigation, fisheries,
8 preservation of lands in their natural state, open space, wildlife
9 habitat, water-oriented recreation, and other recognized public
10 trust uses.

11 (b) The state has made grants of public trust lands to over 80
12 local public entities, each of which manages the state's public trust
13 lands as trustee pursuant to the common law public trust doctrine,
14 statutory grants, the California Constitution, and other laws
15 governing the trust and the trustee's fiduciary responsibilities.

16 (c) A local trustee of granted public trust lands is charged with
17 managing the state's granted public trust lands on behalf of the
18 state for the benefit of all the people of California.

19 (d) As part of its fiduciary duty, a local trustee of granted public
20 trust lands is required to take reasonable steps under the
21 circumstances to take and keep control of and preserve the trust
22 property.

23 (e) The effects of climate change and sea level rise will have
24 enormous implications for the state's economic and social future,
25 and have the potential to have a wide range of impacts to critical

1 infrastructure, such as schools, roads, hospitals, emergency
2 facilities, wastewater treatment plants, airports, ports, and energy
3 facilities.

4 (f) Coastal counties in California are home to approximately 32
5 million people.

6 (g) The coastal economy contributes more than \$50 billion
7 annually to the State of California.

8 (h) Port activities in California generate an estimated \$7 billion
9 in state and local tax revenues annually and employ more than
10 one-half million people in California. Nationwide more than two
11 million jobs are connected to California ports.

12 (i) *In 2007, more than 40 percent of the total containerized*
13 *cargo entering the United States arrived at California ports, and*
14 *almost 30 percent of the nation's exports left from California ports.*

15 (j) *In 2002, cargo operations shutdown at west coast ports for*
16 *10 days, and the estimated loss to the national economy was \$1*
17 *billion per day.*

18 ~~(i)~~

19 (k) Research funded by the state has shown that a 55-inch sea
20 level rise, with a 100-year storm event along the California coast,
21 places approximately 480,000 people (based on the population in
22 2009) and nearly \$100 billion of property at risk.

23 ~~(j)~~

24 (l) Coastal habitats, including wetlands and beaches, provide
25 important ecological, recreational, and scenic functions and values,
26 which are threatened by sea level rise, unless actions are taken to
27 effectively manage these habitats and adjacent lands.

28 ~~(k)~~

29 (m) Many state entities, such as the Governor's Office of
30 Planning and Research, the Strategic Growth Council, the Ocean
31 Protection Council, the San Francisco Bay Conservation and
32 Development Commission, the California Coastal Commission,
33 and the State Lands Commission have supported efforts to develop
34 tools and to increase accessibility to existing state data, and to
35 provide additional data and tools to help local, regional, and state
36 agencies make informed decisions *about sea level rise.*

37 ~~(l) In 2007, more than 40 percent of the total containerized cargo~~
38 ~~entering the United States arrived at California ports, and almost~~
39 ~~30 percent of the nation's exports left from California ports.~~

1 ~~(m) In 2002, cargo operations shut down at West Coast ports~~
2 ~~for 10 days, and the estimated loss to the national economy was~~
3 ~~\$1 billion per day.~~

4 (n) The use of revenues received from trust lands and trust assets
5 by a local trustee of granted public trust lands is limited by the
6 statutory grant, the public trust doctrine, and other laws governing
7 the trust. An evaluation of the impacts of sea level rise on granted
8 public trust lands is directly related to the operation and
9 management of these resources managed on behalf of the state by
10 local trustees and is, therefore, a purpose consistent with the public
11 trust for commerce, navigation, and fisheries, and the applicable
12 statutory grants.

13 (o) Because a local trustee of granted public trust lands holds
14 and manages its public trust property, including the lands and
15 revenue derived from that property, as a state asset for the benefit
16 of the people of California and cannot use the trust corpus for
17 general municipal purposes or other purposes not consistent with
18 the public trust doctrine and its statutory grant, and because the
19 State Lands Commission is provided with a mechanism in this act
20 to exempt a local trustee that does not have sufficient state funds,
21 either through the trust or other existing funding mechanisms, to
22 pay for the cost of ~~developing a sea level action plan~~ *assessing the*
23 *impacts of sea level rise*, Section 6311.5 of the Public Resources
24 Code, as added by this act, will not impose costs on local
25 governments.

26 SEC. 2. Section 6311.5 is added to the Public Resources Code,
27 to read:

28 6311.5. (a) For the purposes of this section, the following
29 terms shall have the following meanings:

30 (1) "Local trustee" means a local trustee of granted public trust
31 lands that is a county, city, or district, including water, sanitary,
32 regional park, port, or harbor district, or any other local political
33 or corporate subdivision that has been granted public trust lands
34 through a legislative grant.

35 (2) "Gross public trust revenues" means those gross revenues
36 that are subject to subdivision (b) of Section 6306.

37 (b) Addressing the impacts from sea level rise for all of its
38 legislatively granted public trust lands pursuant to this section shall
39 be among the management priorities of a local trustee. The
40 geographic scope of a local trustee's assessment of the impacts

1 from sea level rise is not required to go beyond the boundaries of
2 the local trustee's granted public trust lands.

3 (c) A local trustee, whose gross public trust revenues exceed
4 two hundred fifty thousand dollars (\$250,000), shall prepare and
5 submit to the commission, no later than July 1, 2019, ~~a~~
6 ~~descriptive plan~~ *an assessment* of how the local trustee proposes
7 to address sea level rise. A local trustee whose gross public trust
8 revenues are two hundred fifty thousand dollars (\$250,000) or less
9 may, but is not required, ~~to~~ *to*, prepare and submit ~~a plan~~ to the
10 commission *an assessment*.

11 (d) ~~(1)~~ For the purposes of subdivision (c), a local trustee shall
12 consider and use relevant information from the 2009 California
13 Climate Adaptation Strategy prepared by the Natural Resources
14 Agency, the Report on Sea Level Rise Preparedness prepared by
15 the State Lands Commission, the Sea-Level Rise for the Coasts of
16 California, Oregon, and Washington: Past, Present, and Future, a
17 report prepared by the National Academy of Sciences, the
18 Resolution of the California Ocean Protection Council on
19 Sea-Level Rise, and the State of California Sea-Level Rise Interim
20 Guidance Document, any subsequent updates to those reports that
21 become available six months prior to the date the ~~plan~~ *assessment*
22 is required to be submitted to the commission. A local trustee's
23 ~~plan assessment~~ prepared pursuant to subdivision (c) shall include
24 all of the following:

25 ~~(2)~~

26 (1) An assessment of the impact of a range of sea level rise on
27 granted public trust lands, as described in the Resolution of the
28 California Ocean Protection Council on Sea-level Rise and the
29 latest version of the State of California Sea-Level Rise Interim
30 Guidance Document.

31 ~~(3)~~

32 (2) Maps showing the areas that may be affected by sea level
33 rise in the years 2030, 2050, and 2100. These maps shall include
34 the potential impacts of 100-year storm events. A local trustee may
35 rely on appropriate maps generated by other entities.

36 ~~(4)~~

37 (3) An estimate of the financial cost of the impact of sea level
38 rise on granted public trust lands. The estimate shall consider, but
39 is not limited to, the potential cost of repair of damage to and the

1 value of lost use of improvements and land, and the anticipated
2 cost to prevent or mitigate potential damage.

3 ~~(5)~~

4 (4) A description of how the local trustee proposes to protect
5 and preserve natural and manmade resources and facilities located,
6 or proposed to be located, on trust lands and operated in connection
7 with the use of the trust lands.

8 (e) In addressing the impacts from sea level rise, a local trustee
9 shall collaborate with its lessees, appropriate local, state, and
10 federal agencies, and other users of the granted public trust lands.

11 (f) A local trustee that prepares ~~a plan~~ *an assessment* pursuant
12 to subdivision (c) shall submit a copy to the commission in hard
13 copy and electronic form. The commission shall make the ~~plan~~
14 *assessment* available to the public on its Internet Web Site and,
15 for informational purposes, shall send an electronic copy to each
16 member of the Climate Action Team, the climate change program
17 manager in the office of the Secretary for Environmental
18 Protection, and the Governor's Office of Planning and Research.

19 (g) The commission shall exempt a local trustee of granted
20 public trust lands from this section if the commission finds either
21 of the following:

22 (1) The local trustee's public trust lands are not subject to sea
23 level rise by 2100, based upon the highest projections in the most
24 recent version of the State of California Sea-Level Rise Guidance
25 Document.

26 (2) The cost to provide ~~a description~~ *an assessment* of how the
27 local trustee proposes to address the impacts of sea level rise
28 substantially outweighs the benefit the action would have in
29 preventing the potential economic and environmental harms
30 associated with sea level rise on the local trustee's granted public
31 trust lands.

32 (h) The commission shall exempt a local trustee from this section
33 ~~or grant a deadline extension to the July 1, 2019, deadline~~
34 ~~for submission of the plan~~ if the revenues derived from its granted
35 public trust lands and assets subject to subdivision (b) of Section
36 6306 or funding made available to it from other sources is not
37 sufficient to pay for the cost of ~~addressing~~ *assessing* the impacts
38 of sea level rise on granted public trust land and providing ~~a~~
39 ~~description of these efforts~~ *this information* to the commission.

1 (i) The commission shall consider a local trustee's request for
2 an exemption pursuant to subdivision (g) or (h) at a properly
3 noticed commission meeting if the request is made before
4 November 1, 2018.

5 (j) Other than submission of the ~~plan~~ *assessment* required by
6 subdivision (c), this section does not require a local trustee to
7 implement any specific actions to address sea level rise pursuant
8 to this section.

9 (k) Nothing in this section shall be construed to conflict with
10 any federal regulations governing sea level rise.

11 SEC. 3. No reimbursement is required by this act pursuant
12 to Section 6 of Article XIII B of the California Constitution because
13 the costs incurred by a local agency to pay for the program of level
14 of service mandated by this act, within the meaning of Section
15 17556 of the Government Code, will be paid solely from the
16 revenues derived from the public trust lands and assets that are
17 granted to that local agency by the state.